



March 23, 2007

ENGROSSED HOUSE BILL No. 1305

DIGEST OF HB 1305 (Updated March 21, 2007 2:43 pm - DI 110)

Citations Affected: IC 23-14; IC 25-15; IC 30-2.

Synopsis: Cemetery funds. Establishes the consumer protection fund for cemetery maintenance. Provides that the fund consists of contributions from the owners of certain cemeteries. Requires the state board of funeral and cemetery service (board) to administer the fund. Provides that the fund may be used for maintenance of a cemetery when the owner is unable to maintain the cemetery and money is not available from the cemetery's perpetual care fund. Establishes the maximum balance amount of the fund at \$250,000. Increases the maximum balance amount of the preneed consumer protection fund from \$1,500,000 to \$2,500,000. Specifies that a cemetery perpetual care fund must be segregated from other accounts belonging to the owner of the cemetery. Requires the custodian or trustee of a cemetery's perpetual care fund to file an annual accounting with the board of funeral and cemetery service. Authorizes the board to audit a cemetery perpetual care fund.

Effective: July 1, 2007.

Cheatham

(SENATE SPONSORS — LEWIS, NUGENT)

January 16, 2007, read first time and referred to Committee on Family, Children and Human Affairs.

February 8, 2007, amended, reported — Do Pass. Recommended to Committee on Ways and Means.

February 13, 2007, referral to Committee on Ways and Means withdrawn.

February 19, 2007, read second time, amended, ordered engrossed.

February 20, 2007, engrossed.

February 21, 2007, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 27, 2007, read first time and referred to Committee on Commerce, Public Policy and Interstate Cooperation.

March 22, 2007, amended, reported favorably — Do Pass.

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EH 1305—LS 6777/DI 92+



March 23, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1305

A BILL FOR AN ACT to amend the Indiana Code concerning
business and other associations and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-14-48-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) A perpetual care
3 fund shall be established under this chapter as follows:

4 (1) In the case of a cemetery for earth burials, by the application
5 and payment to the perpetual care fund of an amount at least
6 equal to:

7 (A) fifteen percent (15%) of the sale price; or

8 (B) eighty cents (\$0.80) per square foot of area;
9 of each burial plot sold or transferred, whichever is greater.

10 (2) In the case of a community or public mausoleum, or
11 community or public garden crypt, by the application and
12 payment to the perpetual care fund of an amount at least equal to:

13 (A) eight percent (8%) of the sale price; or

14 (B) one hundred dollars (\$100) per crypt sold or transferred;
15 whichever is greater.

16 (3) In the case of a community columbarium, by the application
17 and payment to the perpetual care fund of an amount at least

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equal to twenty dollars (\$20) per niche sold or transferred.

(b) From the sale price, any payment on the sale price, or in a nonmonetary transfer, the owner shall pay an amount in proportion to the requirements of subsection (a)(1) through (a)(3) to the care fund. The payment must be in cash and shall be deposited with the custodian or trustee of the fund:

(1) not more than thirty (30) days after the end of the month in which payments on the sale are received; or

(2) not more than thirty (30) days after the end of the month in which there was a transfer which did not involve a sale.

(c) The payments required by this section are required to be paid only on the original sale or transfer and not again for any subsequent resale or transfer of the same ground interment rights, crypt, or niche.

(d) The custodian or trustee of a fund established under this chapter must keep the fund segregated from any other fund or account belonging to the owner of the cemetery.

SECTION 2. IC 23-14-48-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. **(a)** Not more than ninety (90) days after the end of the fiscal year of a cemetery to which this chapter applies, the custodian **or trustee** of the perpetual care fund of the cemetery shall prepare and file with the owner of the cemetery a detailed accounting and report of the perpetual care fund for the preceding fiscal year. The report:

(1) must include, among other things, a properly itemized listing of the securities in which the funds are invested; and

(2) shall be available for inspection and copying at all times by any owner of or holder of a burial right in the cemetery at the usual place at which the regular business of the cemetery is transacted.

(b) Not more than one hundred five (105) days after the end of the fiscal year of a cemetery to which this chapter applies, the custodian or trustee of the perpetual care fund of the cemetery shall file the report required under subsection (a) with the state board of funeral and cemetery service.

(c) The state board of funeral and cemetery service may audit or order an audit of the perpetual care fund of a cemetery if the state board of funeral and cemetery service determines that the custodian or trustee of the perpetual care fund is not complying with the requirements set forth in subsections (a) and (b). The cemetery that is the subject of the audit shall pay all costs associated with the audit.

SECTION 3. IC 23-14-48.5 IS ADDED TO THE INDIANA CODE

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AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2007]:

**Chapter 48.5. Consumer Protection Fund for Cemetery
Maintenance**

Sec. 1. (a) Except as provided in subsection (b), this chapter does
not apply to:

(1) a cemetery owned by a municipal corporation or other
governmental unit;

(2) a religious cemetery; or

(3) a cemetery:

(A) that is ten (10) acres or less in size;

(B) that is owned and operated entirely and exclusively by
a nonprofit mutual association in existence on June 14,
1939; and

(C) in which burials took place before June 14, 1939.

(b) This chapter applies to the whole of a cemetery described in
subsection (a)(3) if, directly or indirectly:

(1) any structure is constructed above or below ground in the
cemetery and interment rights in the structure are offered for
sale to the general public; or

(2) the acquisition of:

(A) additional land; or

(B) an interest in additional land;

causes the cemetery to exceed ten (10) acres in size.

Sec. 2. As used in this chapter, "board" means the state board
of funeral and cemetery service established by IC 25-15-9-1.

Sec. 3. As used in this chapter, "fund" refers to the consumer
protection fund for cemetery maintenance established by section
4 of this chapter.

Sec. 4. (a) The consumer protection fund for cemetery
maintenance is established. The board shall administer the fund
and shall deposit contributions remitted under section 5 of this
chapter in the fund.

(b) The expenses of administering the fund shall be paid from
money in the fund.

(c) The money in the fund and the interest accruing to the fund
remain in the fund and do not revert to the state general fund.

(d) Money in the fund is continuously appropriated for the
purposes of this chapter.

Sec. 5. (a) The owner of a cemetery shall contribute the
following to the fund:

(1) In the case of a cemetery for earth burials, an amount

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equal to one percent (1%) of the sale price of each burial plot sold or transferred.

(2) In the case of a community or public mausoleum or a community or public garden crypt, an amount equal to one percent (1%) of the sale price of each sale of entombment or inurnment rights.

(3) In the case of a community columbarium, an amount equal to two dollars (\$2) per niche sold or transferred.

The owner shall remit the contributions required under this subsection to the board for deposit in the fund.

(b) In the case of a payment to a cemetery owner of part of the sale price for a burial plot, entombment or inurnment rights, or a niche, the cemetery owner shall pay to the fund an amount proportional to the amount required by subsection (a)(1) through (a)(3). In the case of a nonmonetary transfer in the sale of a burial plot, entombment or inurnment rights, or a niche, the cemetery owner shall pay to the fund the cash equivalent of the amount that would be required by subsection (a)(1) through (a)(3) if the sale were for cash. The payment by the cemetery owner under this section must be in cash and shall be remitted to the board:

(1) not later than March 1 of each year for payments received in the preceding calendar year; or

(2) not later than March 1 of each year for nonmonetary transfers in the preceding calendar year.

(c) Payments are required under this section only on the original sale or transfer and are not required for any subsequent resale or transfer of the same plot, rights, or niche.

Sec. 6. Money in the fund may be used to provide cemetery maintenance when the board finds that:

(1) the owner of a cemetery is unable to maintain the cemetery;

(2) money in the perpetual care fund of the cemetery is depleted, subject to a dispute that prevents distribution of the money, or otherwise unavailable for the purposes of the perpetual care fund; and

(3) interested persons are unable to take over the management, care, and general supervision of the cemetery under IC 23-14-48-10.

Sec. 7. (a) The:

(1) owner of a cemetery; or

(2) if the owner of a cemetery is unable to be determined:

(A) the owner of a lot in the cemetery;

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1 (B) the next of kin of an owner of a lot in the cemetery; or
 2 (C) another interested person;
 3 may request maintenance assistance from the fund by filing a
 4 verified complaint with the board.

5 (b) The board shall investigate each verified complaint. Within
 6 thirty (30) days after a verified complaint is filed, the board shall
 7 complete its investigation and issue findings of fact. If the board
 8 makes the findings required under section 6 of this chapter
 9 concerning a cemetery, the board may enter into a contract with
 10 any suitable person to provide maintenance at the cemetery until
 11 a responsible person is able to provide care and maintenance for
 12 the cemetery.

13 (c) If the cost of maintaining a cemetery is paid from the fund,
 14 the fund is entitled to recover the amount paid from the owner of
 15 the cemetery, and the board shall ask the attorney general to take
 16 all reasonable steps to collect that amount from the cemetery
 17 owner. Any amount collected from a cemetery owner under this
 18 subsection shall be deposited in the fund.

19 (d) The board shall annually review the status of the fund. If the
 20 board determines during its annual review that the fund balance
 21 equals or exceeds two hundred fifty thousand dollars (\$250,000),
 22 the board shall suspend the requirement to make payments to the
 23 fund under section 5 of this chapter until after the next annual
 24 review in which the board determines that the fund balance is less
 25 than two hundred fifty thousand dollars (\$250,000).

26 SECTION 4. IC 25-15-9-8 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. The board shall do
 28 the following:

29 (1) Adopt rules under IC 4-22-2 to do the following:

30 (A) Establish standards for the sale and payment of funeral or
 31 burial services or merchandise in advance of need.

32 (B) Establish the terms of contracts authorized under
 33 IC 30-2-13.

34 (C) Implement IC 30-2-13.

35 **(D) Implement IC 23-14-48.5.**

36 (2) Register and issue certificates to sellers of merchandise or
 37 services under IC 30-2-13.

38 (3) Determine compliance with this article by persons engaged in
 39 the sale and payment of funeral or burial services or merchandise
 40 in advance of need under IC 30-2-13.

41 (4) Investigate any complaint alleging a violation of IC 30-2-13.

42 (5) Set fees under IC 25-1-8.

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(6) For a violation of this article or IC 30-2-13 by a person engaged in the sale and payment of funeral or burial services or merchandise in advance of need under IC 30-2-13, if necessary, take any combination of the following actions:

(A) Issue an appropriate order to correct the violation.

(B) Suspend the seller's certificate of authority.

(C) Permanently revoke the seller's certificate of authority.

(D) Censure the seller.

(E) Issue a letter of reprimand to the seller.

(F) Place the seller on probation.

(G) Assess a civil penalty against the seller in an amount not to exceed one thousand dollars (\$1,000) for each violation, except for a finding of incompetency due to a physical or mental disability. When imposing a civil penalty, the board shall consider the seller's ability to pay the amount assessed.

If the seller fails to pay the civil penalty within the time specified by the board, the board may suspend the seller's certificate of authority without additional proceedings.

However, a suspension may not be imposed if the sole basis for the suspension is the seller's inability to pay a civil penalty.

(H) Refer the matter to the attorney general or prosecuting attorney for enforcement.

(7) In addition to any actions taken under subdivision (6), permanently revoke a seller's certificate of authority, if the seller demonstrates a pattern or practice of violating the following provisions:

(A) The requirement under IC 30-2-13-12 that all property paid or delivered to fund a contract for prepaid services or merchandise be irrevocably deposited to trust or escrow thirty (30) days after the contract is signed.

(B) The prohibition against knowingly inducing a purchaser to breach an existing contract under IC 30-2-13-13(e).

SECTION 5. IC 30-2-13-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 29. (a) Money in the fund may be used to provide restitution to a seller who performs a defaulted contract, to a purchaser, or to a purchaser's estate for pecuniary loss arising from a trust or an escrow required by:

(1) this chapter;

(2) IC 23-14-49-1;

(3) IC 30-2-9; or

(4) IC 30-2-10.

The repeal of a statute cited in this subsection does not terminate the

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ability of a party to a contract made under the repealed statute to receive restitution under this chapter.

(b) The purchaser, seller, or other interested person must request restitution by filing a verified complaint with the board.

(c) The board may investigate any verified complaint. Within sixty (60) days after a verified complaint is filed, the board shall determine if a seller has defaulted on a contract. If the seller's obligation to perform under the contract cannot be collected from the seller, the board shall order the auditor of state to make restitution from the fund.

(d) The amount of restitution may not exceed the gross amount of the original contract plus interest, compounded annually, on the gross amount that is figured, for each year or part of a year for which restitution is owed, using the lesser of:

(1) the rate set forth in IC 24-4.6-1-101 in effect on January 1 of each year; or

(2) the monthly average yield on United States Treasury Securities for the month of January of each year, adjusted to a constant maturity of one (1) year, as published by the Federal Reserve.

The fund may not be charged with court costs or the payment of legal or other fees. In computing the amount of restitution, the board shall give credit for:

(1) merchandise delivered; and

(2) resources still existing in trust.

(e) When restitution is paid from the fund, the fund is subrogated to the amount of the restitution, and the board shall ask the attorney general to take all reasonable steps to collect the subrogated amount from the seller. Any amount collected shall be deposited in the fund.

(f) Money in the fund may only be used for a purpose that is specified in this section.

(g) The payment of restitution from the fund is not a right, and a purchaser does not have a vested right in the fund as a beneficiary of the fund.

(h) The status of the fund shall be annually reviewed by the board. If the board determines during its annual review that the fund balance equals or exceeds ~~one~~ **two** million five hundred thousand dollars (~~\$1,500,000~~), (**\$2,500,000**), the board shall suspend payments to the fund until after the next annual review that the board determines that the fund balance is less than ~~one~~ **two** million five hundred thousand dollars (~~\$1,500,000~~), (**\$2,500,000**).

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred House Bill 1305, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 23-14-48-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) A perpetual care fund shall be established under this chapter as follows:

(1) In the case of a cemetery for earth burials, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) fifteen percent (15%) of the sale price; or

(B) eighty cents (\$0.80) per square foot of area;

of each burial plot sold or transferred, whichever is greater.

(2) In the case of a community or public mausoleum, or community or public garden crypt, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) eight percent (8%) of the sale price; or

(B) one hundred dollars (\$100) per crypt sold or transferred; whichever is greater.

(3) In the case of a community columbarium, by the application and payment to the perpetual care fund of an amount at least equal to twenty dollars (\$20) per niche sold or transferred.

(b) From the sale price, any payment on the sale price, or in a nonmonetary transfer, the owner shall pay an amount in proportion to the requirements of subsection (a)(1) through (a)(3) to the care fund. The payment must be in cash and shall be deposited with the custodian or trustee of the fund:

(1) not more than thirty (30) days after the end of the month in which payments on the sale are received; or

(2) not more than thirty (30) days after the end of the month in which there was a transfer which did not involve a sale.

(c) The payments required by this section are required to be paid only on the original sale or transfer and not again for any subsequent resale or transfer of the same ground interment rights, crypt, or niche.

(d) The custodian or trustee of a fund established under this chapter must keep the fund segregated from any other fund or account belonging to the owner of the cemetery.¹

SECTION 2. IC 23-14-48-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. **(a)** Not more than

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ninety (90) days after the end of the fiscal year of a cemetery to which this chapter applies, the custodian **or trustee** of the perpetual care fund of the cemetery shall prepare and file with the owner of the cemetery a detailed accounting and report of the perpetual care fund for the preceding fiscal year. The report:

- (1) must include, among other things, a properly itemized listing of the securities in which the funds are invested; and
- (2) shall be available for inspection and copying at all times by any owner of or holder of a burial right in the cemetery at the usual place at which the regular business of the cemetery is transacted.

(b) Not more than one hundred five (105) days after the end of the fiscal year of a cemetery to which this chapter applies, the custodian or trustee of the perpetual care fund of the cemetery shall file the report required under subsection (a) with the state board of funeral and cemetery service."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1305 as introduced.)

SUMMERS, Chair

Committee Vote: yeas 10, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1305 be amended to read as follows:

Page 2, between lines 34 and 35, begin a new paragraph and insert:

"(c) The state board of funeral and cemetery service may audit or order an audit of the perpetual care fund of a cemetery if the state board of funeral and cemetery service determines that the custodian or trustee of the perpetual care fund is not complying with the requirements set forth in subsections (a) and (b). The cemetery that is the subject of the audit shall pay all costs associated with the audit."

Page 4, line 32, delete "The owner of a lot in a cemetery, the next of kin of an" and insert **"The:**

- (1) owner of a cemetery; or**
- (2) if the owner of a cemetery is unable to be determined:**
 - (A) the owner of a lot in the cemetery;**

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- (B) the next of kin of an owner of a lot in the cemetery; or**
- (C) another interested person;".**

Page 4, line 33, delete "owner of a lot in a cemetery, or another interested person" and begin a new line blocked left beginning with "may".

Page 5, between lines 7 and 8, begin a new paragraph and insert:

"(d) The board shall annually review the status of the fund. If the board determines during its annual review that the fund balance equals or exceeds two hundred fifty thousand dollars (\$250,000), the board shall suspend the requirement to make payments to the fund under section 5 of this chapter until after the next annual review in which the board determines that the fund balance is less than two hundred fifty thousand dollars (\$250,000)."

(Reference is to HB 1305 as printed February 14, 2007.)

CHEATHAM

COMMITTEE REPORT

Madam President: The Senate Committee on Commerce, Public Policy and Interstate Cooperation, to which was referred House Bill No. 1305, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, delete lines 21 through 24, begin a new line block indented and insert:

- "(1) not later than March 1 of each year for payments received in the preceding calendar year; or**
- (2) not later than March 1 of each year for nonmonetary transfers in the preceding calendar year."**

Page 5, between lines 25 and 26, begin a new paragraph and insert:
"SECTION 4. IC 25-15-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. The board shall do the following:

- (1) Adopt rules under IC 4-22-2 to do the following:
 - (A) Establish standards for the sale and payment of funeral or burial services or merchandise in advance of need.
 - (B) Establish the terms of contracts authorized under IC 30-2-13.
 - (C) Implement IC 30-2-13.
 - (D) Implement IC 23-14-48.5.**

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- (2) Register and issue certificates to sellers of merchandise or services under IC 30-2-13.
- (3) Determine compliance with this article by persons engaged in the sale and payment of funeral or burial services or merchandise in advance of need under IC 30-2-13.
- (4) Investigate any complaint alleging a violation of IC 30-2-13.
- (5) Set fees under IC 25-1-8.
- (6) For a violation of this article or IC 30-2-13 by a person engaged in the sale and payment of funeral or burial services or merchandise in advance of need under IC 30-2-13, if necessary, take any combination of the following actions:
 - (A) Issue an appropriate order to correct the violation.
 - (B) Suspend the seller's certificate of authority.
 - (C) Permanently revoke the seller's certificate of authority.
 - (D) Censure the seller.
 - (E) Issue a letter of reprimand to the seller.
 - (F) Place the seller on probation.
 - (G) Assess a civil penalty against the seller in an amount not to exceed one thousand dollars (\$1,000) for each violation, except for a finding of incompetency due to a physical or mental disability. When imposing a civil penalty, the board shall consider the seller's ability to pay the amount assessed. If the seller fails to pay the civil penalty within the time specified by the board, the board may suspend the seller's certificate of authority without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the seller's inability to pay a civil penalty.
 - (H) Refer the matter to the attorney general or prosecuting attorney for enforcement.
- (7) In addition to any actions taken under subdivision (6), permanently revoke a seller's certificate of authority, if the seller demonstrates a pattern or practice of violating the following provisions:
 - (A) The requirement under IC 30-2-13-12 that all property paid or delivered to fund a contract for prepaid services or merchandise be irrevocably deposited to trust or escrow thirty (30) days after the contract is signed.
 - (B) The prohibition against knowingly inducing a purchaser to breach an existing contract under IC 30-2-13-13(e)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

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(Reference is to HB 1305 as reprinted February 20, 2007.)

BECKER, Acting Chairperson

Committee Vote: Yeas 9, Nays 0.

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